

RECEIVED

2008 FEB 12 PM 1:25

FLORIDA HOUSING
FINANCE CORPORATION

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

Madison Manor, Ltd.,
a Florida limited partnership

Petitioner,

vs

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

APPLICATION NO. 2005-085C
FHEC CASE NO.:

2005-085C/VW

**PETITION FOR WAIVER FROM RULE 67-48.004(14), FLORIDA ADMINISTRATIVE
CODE AND PART III, A.4. OF THE UNIVERSAL APPLICATION INSTRUCTIONS**

Madison Manor, Ltd., a Florida limited partnership ("Applicant" or "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rule 67-48.004(14), Florida Administrative Code (2005) and Part III, A.4 of the 2005 Universal Application Instructions¹ ("Rules"). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Madison Manor, Ltd.
615 Crescent Executive Court, 120
Lake Mary, Florida 32746
(407) 741-8500

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Michael G. Maida
Michael G. Maida P.A.
1709 Hermitage Blvd., Suite 201
Lallahassee, FL 32308
Phone: (850) 425-8124
Facsimile (850) 681-0879

¹ The Universal Application Instructions are adopted as rules via their incorporation into Chapter 67-48, Florida Administrative Code

3. Petitioner successfully applied for financing from the Housing Tax Credit ("HC") program in the 2005 Universal Application Cycle - Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the "Universal Cycle") that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's application number is 2005-0860' (the "Application"). Petitioner applied for HC Funds to finance a portion of the costs to develop a multifamily rental apartment complex in Duval County, Florida, to be known as Madison Manor Apartments (the "Development"). The Application for which Petitioner received a preliminary award of financing from the Corporation was for a 160-unit "Garden Apartments" complex.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(14), Florida Administrative Code (2005) and Part III, A, 4 of the 2005 Universal Application Instructions. Specifically, Petitioner is seeking a waiver from the "Development Type" designation identified by Petitioner in its Application as required at Part III, A, 4, of the Universal Application Instructions.

1. Rule 67-48.004(14) provides, in relevant part, as follows:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

* * *

(g) Development Type

* * *

STATUTES IMPLEMENTED BY THE RULES

5. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act,² the statute that created the HC Program. See §420.5093, Florida Statutes.

**PETITIONER REQUESTS A WAIVER FROM
THE RULES FOR THE FOLLOWING REASONS**

6. Petitioner requests a waiver from Rule 67-48.004(14), Florida Administrative Code (2005) and Part III, A-4 of the 2005 Universal Application Instructions. Petitioner is seeking a waiver from the Rules and allowing it to change the Development Type listed in the Application from "Garden Apartments" to "Mid-Rise with Elevator (a building comprised of 4 stories)".

7. This Development is designated as an Elderly Development. During the final planning stages, it became apparent that a Mid-Rise Development would be more beneficial to the intended residents. The elderly tenants would have a greater distance to walk in order to access the elevator and other amenities in the Garden Style Development, because there would have to be more units per floor. In a Mid-Rise Development, the addition of the fourth floor would allow for fewer units per floor resulting in a shorter distance to walk in order to access the elevator and other amenities in the Development.

8. The Application's scoring and funding would not have been affected had the Applicant selected the Mid-Rise Development Type when it submitted its original Application. In addition, there is no leveraging benefit associated with selecting "Mid Rise" as the Development Type.

² The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

9. The Corporation has the authority pursuant to Section 120.542(1) Florida Statutes, to provide relief from its rules if strict application of the rules will lead to unreasonable, unfair and unintended results in particular instances. Construction is complete with respect to this Development. The Development has the same number of units, serves the same demographic, and in all other respects satisfies the conditions and requirements of the Application's rules and instructions. If the Waiver is not granted, Petitioner will not be able to convert its construction loan to a permanent loan. If the Waiver is not granted, Petitioner is at risk of being in non-compliance with its limited partnership agreement and all loan documents with respect to this Development. As a result of this potential non-compliance, the Developer may be precluded from participating in future affordable housing programs. Unless the Petitioner's request is granted, strict application of the rules would violate principles of fairness. Moreover, unless the rule is waived to allow for the requested change, Petitioner may not be entitled to receive an allocation of Tax Credits, thus resulting in substantial hardship to the Petitioner.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

10. Petitioner believes that a waiver of these rules will serve the purposes of the statute, which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to change its Developer Type as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

11. The waiver being sought is permanent in nature

12. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

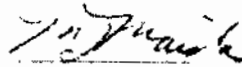
ACTION REQUESTED

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Part III, A.4 of the 2005 Universal Application Instructions and Rule 67-48.004(14), Florida Administrative Code (2005), and allowing it to change the Development Type listed in the Application from "Garden Apartments" to Mid-Rise with Elevator (a building comprised of 4 stories)."
- b. This waiver would be permanent as to the Petitioner.

A copy of the Amended Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 12th day of February 2008.



Michael G. Maida
Fla. Bar No. 0435945
Michael G. Maida, P.A.
1709 Hermitage Blvd, Suite 201
Tallahassee, FL 32308
(850) 425-8124
(850) 681-0879 Facsimile
Counsel for Petitioner